IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs October 30, 2002

THOMAS NEWSOME v. QUENTON WHITE

Appeal from the Chancery Court for Davidson County
No. 01-1932-I Irvin H. Kilcrease, Jr., Chancellor

No. M2001-03014-COA-R3-CV - Filed December 22, 2003

This appeal involves a prisoner who was disciplined for assaulting a prison employee. After the Department extended his release eligibility date by thirty percent under Tenn. Dep't Corr. Policy Index No. 502.02, the prisoner requested a declaratory order that the policy did not apply to him because the Department had failed to give him fair warning of the policy as required by Tenn. Code Ann. § 41-21-218 (2003). The Department denied the request, and the prisoner filed a Tenn. Code Ann. § 4-5-225 (1998) petition for declaratory judgment in the Chancery Court for Davidson County against the Commissioner of Correction. The trial court, treating the petition as a petition for common-law writ of certiorari, granted the Commissioner's motion to dismiss after determining that it lacked subject matter jurisdiction over the prisoner's claim and that the prisoner had failed to state a claim because the punishment he received was not serious enough to infringe upon a protected liberty interest. The prisoner has appealed. We affirm the dismissal of the prisoner's petition because he has misconstrued Tenn. Code Ann. § 41-21-218.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Thomas Newsome, Henning, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Christopher Michael Fancher, Assistant Attorney General, for the appellee, Quenton White.[1]

OPINION

I.

Thomas Newsome raped a female acquaintance in 1984. After his first conviction was reversed on appeal, he was tried and convicted of aggravated rape and aggravated kidnapping in 1988, and he received an effective sentence of fifty-five years in the custody of the Department of

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[1] Quenton White, the current Commissioner of Correction, has been substituted in accordance with Tenn. R. App. P. 19(c).

Correction.[2] In the summer of 1997, while incarcerated at the Turney Center Industrial Prison and Farm, Mr. Newsome was charged and convicted of the prison disciplinary offense of assaulting a member of the prison staff. As a result of this conviction, Mr. Newsome was placed in punitive segregation for ten days, recommended for involuntary administrative segregation, and fined five dollars. In addition, his release eligibility date was extended by thirty percent in accordance with Tenn. Dep't Corr. Policy Index No. 502.02(VI)(E).[3] Mr. Newsome's conviction and punishment were reviewed and affirmed by the Department.

Following the disciplinary proceeding, Mr. Newsome requested the Department to issue a declaratory order regarding the extension of his release eligibility date. He asserted that he was functionally illiterate and that the Department should not have applied Policy No. 502.02 to him because the Department had failed to provide him "fair notice and warning" of all disciplinary rules and subsequent rule changes as required by Tenn. Code Ann. § 41-21-218 (2003). The Department denied Mr. Newsome's request for a declaratory order.

In June 2001, Mr. Newsome filed a pro se petition for declaratory judgment pursuant to Tenn. Code Ann. § 4-5-225 (1998) in the Chancery Court for Davidson County. He requested the court to declare that the Department could not extend his release eligibility date pursuant to Policy No. 502.02 without first complying with Tenn. Code Ann. § 41-21-218. The Department responded with a motion seeking dismissal of the petition on two grounds – lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

The trial court entered an order in October 2001 granting the Department's motion and dismissing Mr. Newsome's petition. The court reasoned that it lacked subject matter jurisdiction because the Uniform Administrative Procedures Act applied only to contested cases and because Mr. Newsome's petition, construed as a petition for common-law writ of certiorari, was untimely. The trial court, citing *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293 (1995), also concluded that Mr. Newsome had failed to state a claim upon which relief could be granted because the punishment meted out for his disciplinary infraction was neither atypical nor did it rise to a hardship uncommon among prisoners. Mr. Newsome has appealed.

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[2] *State v. Newsome*, 798 S.W.2d 542 (Tenn. Crim. App. 1990) (direct appeal); *Newsome v. State*, 01C01-9506-CR-00167, 1997 WL 763047 (Tenn. Crim. App. Dec. 9, 1997), *perm. app. denied* (Tenn. April 13, 1998) (post-conviction).

[3] At that time, Policy No. 502.02(VI)(E) provided:

> Based on the seriousness of the incident, a disciplinary offense that resulted in physical injury to an employee, volunteer or visitor that requires medical treatment, in addition to any other punishment imposed, the offender's parole or release eligibility date may be extended by adding thereto an additional up to thirty percent (30%) of the offender's original maximum sentence, or by extending the inmate's parole or release eligibility date to the sentence expiration date, whichever is less . . ..

II.
THE TRIAL COURT'S SUBJECT MATTER JURISDICTION

We turn first to the trial court's determination that it lacked subject matter jurisdiction to consider Mr. Newsome's petition for declaratory judgment pursuant to Tenn. Code Ann. § 4-5-225. We have concluded that the court erred first by concluding that the Uniform Administrative Procedures Act applied only to contested cases and second by treating Mr. Newsome's petition as a petition for common-law writ of certiorari when plainly it was not.

The concept of subject matter jurisdiction involves a court's power to adjudicate a particular type of case or controversy. *Toms v. Toms*, 98 S.W.3d 140, 143 (Tenn. 2003); *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001). A court derives its subject matter jurisdiction, either explicitly or by necessary implication, from the Constitution of Tennessee or from legislative act. *Meighan v. U.S. Sprint Communications Co.*, 924 S.W.2d 632, 639 (Tenn. 1996); *Dishmon v. Shelby State Cmty. College*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). The parties cannot confer subject matter jurisdiction on a trial or an appellate court by appearance, plea, consent, silence, or waiver. *State ex rel. Dep't of Social Servs. v. Wright*, 736 S.W.2d 84, 85 n.2 (Tenn. 1987); *Caton v. Pic-Walsh Freight Co.*, 211 Tenn. 334, 338, 364 S.W.2d 931, 933 (1963); *Team Design v. Gottlieb*, 104 S.W.3d 512, 527 (Tenn. Ct. App. 2002).

A court's subject matter jurisdiction in a particular circumstance depends on the nature of the cause of action and the relief sought. *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn.1994). Thus, when a court's subject matter jurisdiction is questioned, the court must first ascertain the nature or gravamen of the case and then must determine whether the Constitution of Tennessee, the General Assembly, or the common law have conferred on it the power to adjudicate cases of that sort. Issues involving subject matter jurisdiction are purely questions of law. Accordingly, a trial court's decision regarding its subject matter jurisdiction is not entitled to a presumption of correctness on appeal. *Northland Ins. Co. v. State*, 33 S.W.3d at 729; *Southwest Williamson County Cmty. Ass'n v. Saltsman*, 66 S.W.3d 872, 876 (Tenn. Ct. App. 2001).

The trial court's conclusion that the Uniform Administrative Procedures Act applies only to appeals from contested cases is erroneous. Tenn. Code Ann. § 4-5-225 expressly provides that persons who have petitioned a state department or agency for a declaratory order may file a petition for declaratory judgment in the Chancery Court for Davidson County seeking a judicial resolution of the same question presented to the administrative agency. Thus, the statute explicitly gives the Chancery Court for Davidson County subject matter jurisdiction to consider petitions such as the one Mr. Newsome filed. *Percy v. Tennessee Dep't of Corr.*, No. M2001-01629-COA-R3-CV, 2003 WL 535919, at *3 n.7 (Tenn. Ct. App. Feb. 26, 2003) (No Tenn. R. App. P. 11 application filed); *Campbell v. Tennessee Dep't of Corr.*, No. M2001-00507-COA-R3-CV, 2002 WL 598547, at *2 (Tenn. Ct. App. Apr. 19, 2002) (No Tenn. R. App. P. 11 application filed).

Because the trial court unquestionably had subject matter jurisdiction over Mr. Newsome's petition for declaratory judgment under Tenn. Code Ann. § 4-5-225, it erroneously undertook to

characterize his petition as a petition for common-law writ of certiorari when it plainly was not. [4] Courts should construe pleadings based on the relief they seek. *Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995). They should also give effect to a party's characterization of his or her own claim because the party making the claim has the prerogative to decide which cause of action it will pursue. *Burks v. Boles*, 934 S.W.2d 653, 654 (Tenn. Ct. App. 1996). Mr. Newsome's petition states categorically that he is seeking judicial relief under Tenn. Code Ann. § 4-5-225. The trial court should have taken the petition on its face value and should have found that it had subject matter jurisdiction to adjudicate Mr. Newsome's claim.[5]

III.
FAILURE TO STATE A CLAIM FOR DECLARATORY JUDGMENT UNDER TENN. CODE ANN. § 4-5-225

The trial court also determined that Mr. Newsome's petition failed to state a claim upon which relief could be granted. This decision rests on two conclusions – that Mr. Newsome's petition was a petition for common-law writ of certiorari and that *Sandin v. Conner*, 515 U.S. 472, 115 S. Ct. 2293 (1995) provided grounds for declining to issue a common-law writ of certiorari in cases of this sort as long as the punishment meted out to the prisoner in the disciplinary proceeding was not harsh enough to amount to the imposition of atypical and significant hardship in relation to the ordinary incidents of prison life. Both conclusions are incorrect.

Mr. Newsome's petition is not a petition for common-law certiorari; it is a petition for a declaratory judgment under Tenn. Code Ann. § 4-5-225. The courts have not extended the *Sandin v. Conner* rationale to petitions for a declaratory judgment. Even if they had, it is now clear that the *Sandin v. Conner* decision no longer provides a basis for brushing aside a prisoner's efforts to seek judicial review of prison disciplinary proceedings, *Willis v. Tennessee Dep't of Corr.*, 113 S.W.3d 706, 712-14 (Tenn. 2003), and it should not be used to avoid judicial consideration of a prisoner's otherwise proper petition for declaratory judgment under Tenn. Code Ann. § 4-5-225.

Mr. Newsome sought a declaratory order from the Department pursuant to Tenn. Code Ann. § 4-5-223 (1998) as required by Tenn. Code Ann. § 4-5-225(b). He filed his petition in a timely manner, and, by naming the Commissioner of Correction as the defendant, effectively made the Department a party as required by Tenn. Code Ann. § 4-5-225(a). His petition questions the applicability of a statute – Tenn. Code Ann. § 41-21-218 – to a state agency in specified

[4] It was to the Commissioner's advantage to characterize Mr. Newsome's petition as a petition for common-law writ of certiorari because as such it would plainly be time-barred by Tenn. Code Ann. § 27-9-102 (2002). *Hickman v. Tennessee Bd. of Paroles*, 78 S.W.3d 285, 289 (Tenn. Ct. App. 2001); *A'La v. Tennessee Dep't of Corr.*, 914 S.W.2d 914, 916 (Tenn. Ct. App. 1995).

[5] The Commissioner has not argued that Mr. Newsome waived his opportunity to question the Department's compliance with Tenn. Code Ann. § 41-21-218 by failing to raise it in the disciplinary proceeding itself. Accordingly, we will not address that question here.

circumstances.[6] Accordingly, Mr. Newsome's petition shows on its face that he has complied with all the statutory requirements for seeking a declaratory judgment under Tenn. Code Ann. § 4-5-225, and the trial court erred by determining that he had failed to state a claim upon which relief under Tenn. Code Ann. § 4-5-225 could be granted.

IV.
THE RELIEF AVAILABLE TO MR. NEWSOME UNDER TENN. CODE ANN. § 4-5-225

The scope of the relief available to Mr. Newsome in this case is limited because he could have obtained the same relief in a more timely manner had he sought judicial review of the discipline he received in 1997 or 1998. Petitions for declaratory judgment under both Tenn. Code Ann. § 4-5-225 and Tenn. Code Ann. § 29-14-103 (2000) are not governed by specific statutes of limitations. However, when a petition for declaratory judgment seeks the same relief that is otherwise available in another statutory proceeding, then the filing of the declaratory judgment is governed by the statute of limitations governing that statutory proceeding. *Dehoff v. Attorney General*, 564 S.W.2d 361, 363 (Tenn. 1978) (a declaratory judgment challenging a special referendum is governed by the statute of limitations applicable to election contests); *Kielbasa v. B & H Rentals, LLC*, No. M2002-00129-COA-R3-CV, 2003 WL 21297315, at *3-5 (Tenn. Ct. App. May 22, 2003) (No Tenn. R. App. P. 11 application filed) (declaratory judgment challenging a decision of a board of zoning appeals is governed by the statute of limitations for petitions for common-law writs of certiorari).

The only procedural vehicle for obtaining direct judicial review of a prison disciplinary proceeding is a petition for common-law writ of certiorari. *Willis v. Tennessee Dep't of Corr.*, 113 S.W.3d 706, 712 (Tenn. 2003); *Robinson v. Clement*, 65 S.W.3d 632, 634 n.1 (Tenn. Ct. App. 2001). These petitions must be filed within sixty days after the entry of the order or judgment from which relief is sought. Tenn. Code Ann. § 27-9-102 (2000). Failing to file a timely petition requires the courts to decline to grant the writ. *Hickman v. Tennessee Bd. of Paroles*, 78 S.W.3d 285, 289 (Tenn. Ct. App. 2001); *A'La v. Tennessee Dep't of Corr.*, 914 S.W.2d 914, 916 (Tenn. Ct. App. 1995).

Because of the similarity of the relief Mr. Newsome is presently seeking and the relief that would have been available to him through a common-law writ of certiorari, we find that his petition for declaratory judgment, to the extent it seeks relief from the Department's disciplinary decision in 1997 or 1998, is governed by Tenn. Code Ann. § 27-9-102. Thus, Mr. Newsome's petition for declaratory judgment filed in June 2001 is time-barred, at least insofar as providing relief from the punishment he received in the 1997 or 1998 disciplinary proceeding, because it was filed more than sixty days after the entry of the disciplinary order.

However, the fact that Mr. Newsome is not entitled to relief from the discipline imposed on him in 1997 or 1998 does not mean that he is not entitled to a declaratory judgment. Declaratory judgments serve the salutary purpose of affording relief from uncertainty and insecurity with regard to the correct interpretation and application of statutes. *See Snow v. Pearman*, 222 Tenn. 458, 462, 436 S.W.2d 861, 863 (1968); *Campbell v. Sundquist*, 926 S.W.2d 250, 257 (Tenn. Ct. App. 1996). Accordingly, the statutes authorizing them should be liberally construed and administered to provide

[6] Mr. Newsome's challenge to the application of a statute differs materially from a challenge to the application of a prison disciplinary rule. *See Fuller v. Campbell*, 109 S.W.3d 737, 739 (Tenn. Ct. App. 2003).

relief from uncertainty and insecurity. *Shelby County Bd. of Commr's v. Shelby County Quarterly Court*, 216 Tenn. 470, 482, 392 S.W.2d 935, 941 (1965); *Campbell v. Sundquist*, 926 S.W.2d at 256.

Mr. Newsome has alleged the existence of uncertainty with regard to the application of Tenn. Code Ann. § 41-21-218 to the Department's current Uniform Disciplinary Policies. These policies apply not only to Mr. Newsome and the particular punishment he received in 1997 or 1998, but also to other functionally illiterate prisoners like Mr. Newsome and to Mr. Newsome himself in future disciplinary proceedings. Mr. Newsome is, therefore, entitled to a declaratory judgment under Tenn. Code Ann. § 4-5-225 with regard to the prospective application of Tenn. Code Ann. § 41-21-218, even if he is not entitled to use a proceeding under Tenn. Code Ann. § 4-5-225 to collaterally attack the discipline he received in 1997 or 1998.

V.
THE APPLICATION OF TENN. CODE ANN. § 41-21-218

We have decided to address the substance of Mr. Newsome's claim even though the trial court did not. He asserts (1) that he is functionally illiterate, (2) that Tenn. Code Ann. § 41-21-218 "assur[es] that all non-reading inmates be provided notice and fair warning of all rules and rule changes regarding disciplinary rules and punishment," and (3) that the Department failed to comply with Tenn. Code Ann. § 41-21-218 when it revised Policy No. 502.02 in 1996 because it did not explain these revisions to him personally. Mr. Newsome's claim fails because Tenn. Code Ann. § 41-21-218 does not require the Department to explain changes in disciplinary policies to prisoners who are already incarcerated when the policy changes are made.

Tenn. Code Ann. § 41-21-218, which traces its ancestry back to 1829,[7] provides:

> Such of the foregoing regulations, with all others adopted by the general assembly or the commissioner in reference to the police and government of the penitentiary, which it is necessary that the inmates should know, together with the provisions of part 4 of this chapter, §§ 39-12-103, 39-13-304, 39-16-201, 39-16-402, 39-16-403, title 39, chapter 16, part 6 in relation to escapes, and § 39-17-303 shall be printed so as to be conveniently read, and set up by the warden, in a conspicuous place, and also read and explained by the warden to each inmate upon admission to the penitentiary.

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[7] As originally enacted, Tenn. Code Ann. § 41-21-218 provided:

> Such of the foregoing rules, and any others which may be adopted by the board of inspectors, with which it may be necessary that the convicts should be acquainted in order that they may conform themselves thereto, shall be printed . . . and put up against the wall in the work shops, and . . . in each cell, so that each convict may be well acquainted with the rules of the prison, and of the penalties provided fora violation of them; and the said rules shall be read and explained by the agent to each new convict on his admission into the Penitentiary.

Act of Dec. 31, 1829, ch. 38, § 26, 1829 Tenn. Pub. Acts 61, 71.

Mr. Newsome does not dispute that the Department places copies of the current statutes, rules, and polices in the prison libraries and makes these documents readily available to prisoners. He asserts, however, that these documents are of little benefit to functionally illiterate prisoners like him because he cannot read them. He argues that Tenn. Code Ann. § 41-21-218 requires the Department to "assur[e] that all non-reading inmates be provided notice and fair warning of all rules and rule changes regarding disciplinary rules and punishment."

In this case, as in all cases involving statutory construction, our sole job is to ascertain and then to effectuate the legislature's will as reflected in the statute's language. *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn. 2000); *State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754 (Tenn. Ct. App. 2001). In doing that, we begin with the actual words of the statute, *Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999); *Neff v. Cherokee Ins. Co.*, 704 S.W.2d 1, 3 (Tenn. 1986), giving them their natural and ordinary meaning unless their context requires otherwise. *State v. Fitz*, 19 S.W.3d 213, 216 (Tenn. 2000); *SunTrust Bank v. Johnson*, 46 S.W.3d 216, 224 (Tenn. Ct. App. 2000). We stop well short of the point of stretching a statute's words to encompass a meaning that outstrips the General Assembly's expressed intent. *SunTrust Bank v. Johnson*, 46 S.W.3d at 224.

Contrary to Mr. Newsome's assertion, Tenn. Code Ann. § 41-21-218 does not require the Department to "implement[ ] a procedure for inmates without the ability to read" to inform them of changes in the Department's disciplinary policies. All the statute requires is that the Department explain these policies and rules to prisoners "upon admission to the penitentiary." Mr. Newsome does not allege that the Department failed to comply with Tenn. Code Ann. § 41-21-218 when he was first placed in the Department's custody. His only claim is that the Department did not read and explain the revised version of Policy No. 502.02 after it was amended in 1996. That assertion fails to state a claim upon which relief can be granted because Tenn. Code Ann. § 41-21-218 does not require the Department to read or otherwise inform functionally illiterate inmates of changes in the disciplinary policies. The statute only requires the Department to place copies of these policies in a conspicuous place in each institution. Accordingly, Mr. Newsome has read more into Tenn. Code Ann. § 41-21-218 than the statute's plain language can bear.

VI.

We affirm the judgment dismissing Mr. Newsome's petition, albeit on grounds other than those relied upon by the trial,[8] and we remand the case for whatever further proceedings may be required. We tax the costs of this appeal to the State of Tennessee.

WILLIAM C. KOCH, JR., J.

[8]The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial court when the trial court reached the correct result. *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 789 (Tenn. Ct. App. 1999); *Allen v. Nat'l Bank of Newport*, 839 S.W.2d 763, 765 (Tenn. Ct. App. 1992); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991).